

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

MICHAEL K. HERRON	:	Case No. 19-24527-TPA
	:	
<i>Debtor(s)</i>	:	Chapter 11
	:	
MICHAEL K. HERRON,	:	Adversary No. 20-2133-TPA
	:	Related to Doc No. 5, 8
<i>Plaintiff(s)</i>	:	
	:	
v.	:	
	:	
BANK OF AMERICA,	:	Hearing: May 11, 2021 at 10:00 A.M.
	:	
<i>Defendant(s)</i>	:	

ORDER SETTING TRIAL

Due to the ongoing public health crisis, the hearing scheduled in this matter shall be held entirely by video. This includes the remote examination of witnesses, which is permissible under *Federal Rule of Civil Procedure 43(a)*, made applicable herein by *Federal Rule of Bankruptcy Procedure 9017*, “[f]or good cause in compelling circumstances and with appropriate safeguards[.]” Therefore,

AND NOW, this 26th day of ***April, 2021***, after the Final Pretrial Conference held this date on above-captioned adversary proceeding involving the ***Amended Complaint to Determine Secured Status*** (Doc. 5) and the ***Answer of Bank of America, N.A. to the Plaintiff’s Complaint to Determine Secured Status*** (Doc. 8), it is hereby ***ORDERED, ADJUDGED and DECREED*** that:

(1) A trial on the above matter is scheduled via the ***Zoom Video Conference Application*** for ***May 11, 2021 at 10:00 A.M.***

(2) ***Appearances:*** All those Parties and Attorneys intending to appear must participate remotely by using the Zoom Video Conference Application (hereinafter “Zoom”).

(3) ***Registration of Zoom Users:*** To allow the Court to properly plan for the hearing, ***no later than May 7, 2021:***

- (a) Each Party must register with the Court all persons representing or sponsored by the Party (i.e. counsel, witnesses, Party representatives) who wish to attend the hearing via Zoom.
- (b) Registration is made by e-mailing a list containing each person’s name, relationship to the party, and role in the hearing to Judge Agresti’s Staff Attorney, Courtney Helbling, at courtney_helbling@pawb.uscourts.gov.
- (c) Registration information must also include what type of device each person will be connecting from. This information will be used only for purposes of identifying incoming participants to the Zoom session and will not be made public.
- (d) In order to optimize the use of Zoom, the Court requests that, if possible, Counsel limit requests for Zoom participation to one attorney per law firm.
- (e) All Counsel expecting to actually participate in the hearing and question a witness must attend via Zoom unless exempted by the Court.
- (f) Individuals intending to register solely for telephonic attendance must register with Atty. Helbling no later than 24 hours prior to the start of the hearing otherwise he/she may not be able to attend the hearing.

(4) ***Accessing Zoom Hearing:*** To join the Zoom hearing please initiate and use the following link at least 15 minutes prior to the scheduled hearing time: <https://www.zoomgov.com/j/16021303488>, or alternatively, you may use the following to access the Zoom Hearing: **Meeting ID: 160 2130 3488**. For questions regarding the connection contact Judge Agresti's Staff Lawyer, Atty. Courtney Helbling, at 814-464-9781.

(5) ***Zoom Hearing Attire:*** Appropriate professional courtroom attire is required for attorney attendance.

(6) ***Minimization of Noise Interference:*** One of the challenges the global health crisis has created is the need for many to conduct work out of informal workspaces which are often not protected from the ambient noises of life (for example, pets, other persons in the household, phone line interference, etc.). As a result, all Zoom participants must make a concerted effort to minimize all background noise. As part of this effort,

- (a) All Zoom participants must mute their microphone even before connecting to the Zoom Hearing;
- (b) Microphones are to remain muted unless actively speaking;
- (c) Unless directly addressed by the Court, during the course of the Zoom Hearing, Counsel may indicate a desire to speak by "raising their hand" in the ***Chat Feature*** of the Zoom Hearing mode. Using this feature will send a notification to the Court and Counsel will be provided with an opportunity to address the Court. Counsel should familiarize themselves with the Chat Feature prior to the Hearing; and,
- (d) In order to reduce the "echo effect," when speaking during the Zoom Hearing the participants must reduce the volume of his/her microphone to the lowest level possible to allow the participant to reasonably participate in the Zoom Hearing.

(7) **Witnesses:** In addition to the registration of witnesses as Zoom participants under Paragraph 3 above, no later than May 7, 2021 each party shall file on the docket the following information for each witness:

- (a) The name and title of the witness;
- (b) The general topic(s) of the witness's testimony;
- (c) The geographical location of the witness (city, state, country);
- (d) The type of location from which the witness will testify (ex. residence, office, etc.). For privacy reasons, please do not include an exact address;
- (e) Indicate whether anyone will be in the room with the witness during testimony and if so, the identity of that person (name/title/relationship to witness) and the purpose of their presence, and;
- (f) Which exhibits, if any, the party expects to utilize during examination of the witness.

(8) **Exhibits:** The Parties shall cooperate in the exchange of all documents incidental and related to the matter at issue and file an Exhibit List identifying all exhibits to be offered at the time of the evidentiary hearing. As the Court will be the party "sharing" the referenced documents via Zoom during the Hearing, compliance with exhibit filing instructions is essential to the smooth and efficient presentation of Exhibits. *In addition to the instructions set forth below regarding exhibits, for a more detailed description of instructions for processing of exhibits in Judge Agresti cases, Parties are directed to Judge Agresti's webpage at <http://www.pawb.uscourts.gov/procedures>, on or before May 7, 2021:*

- (a) The Parties shall provide the Court with a single courtesy copy of the cumulatively marked, Bates stamped exhibits, in paper form (see Paragraph 9, below), as well as a USB drive

containing all exhibits at the time of the pretrial conference or evidentiary hearing whichever first occurs;

- (b) The Parties shall make three (3) additional sets of exhibits for use by Court staff and witnesses and provide them to the Court at least three (3) full business days prior to the date set for the scheduled hearing;
- (c) Unless an objection is noted on the Exhibit List, exhibits will be admitted without further testimony. Any objections noted on the Exhibit List as to the admissibility of a specific exhibit will be resolved prior to use of the exhibit;
- (d) All exhibits upon which there is an agreement as to admissibility shall be pre-marked as "Court Exhibits" in numerical fashion ("CR-1", "CR-2", etc.) with subcategories of exhibits pre-marked alphabetically ("CR-1(a)", "CR-1(b)", etc.);
- (e) The Movant/Plaintiff's exhibits to which there is any objection shall be pre-marked *alphabetically* with subcategories of exhibits pre-marked *numerically* ("A(1)", "A(2)", etc.);
- (f) The Respondent/Defendant's exhibits to which there is any objection shall be pre-marked *numerically* with subcategories of exhibits pre-marked *alphabetically* ("1(a)", "1(b)", etc.); and,
- (g) ***No other documents will be admitted at the time of the evidentiary hearing unless Counsel demonstrates cause for their prior non-disclosure pursuant to this Order. Mere inability to timely locate documents shall not constitute cause.***

(9) ***Bates Stamp Requirement:*** Exhibits cumulatively numbering in excess of 20, single-sided, total pages (not including an "Exhibit List" cover page index) shall be bound in some manner, i.e., in looseleaf notebook or hard binding (with binding on the left, not the top), at the time of presentation to the Court and for use during any proceeding. Each exhibit page contained in the Exhibit Book shall be collectively numbered in the lower right hand corner of each page of the collective exhibit document (Bates stamp), from the first page to the last page, independent of any exhibit identification numbers previously placed on a respective exhibit.

(10) ***Stipulations:*** To the extent the Parties agree to present their case upon stipulated facts and without live testimony, all or in part, a Stipulation to that effect shall be filed setting forth all of the agreed upon facts to be relied upon by the Court in rendering its decision. A copy of the Stipulation shall also be identified as a Courtroom Exhibit and listed as an exhibit according to Paragraph 8, above.

(11) ***Expert Reports:*** The Court has found through experience that material appearing in color on an original expert report, for example photographs of the property in an appraisal report, are important and helpful for the Court's consideration. Therefore, any expert report with material in color shall be filed in color. Any courtesy copy hand-delivered to Chambers prior to the evidentiary hearing shall also be reproduced in color.


(12) ***Recording of Hearing:*** Other than the Court, no party or hearing participant may record any part of the Hearing, whether by use of the Zoom recording capabilities, third-party applications, or by any other means.

(13) ***Zoom Exemption:*** As previously noted, all participants in the Zoom Hearing shall participate via Zoom. However, upon appropriate cause shown, filed no later than Noon of ***the day prior*** to the Zoom Hearing, the Court may allow a one-time exemption and grant Counsel participation by telephonic means.



(14) ***Speed Tests:*** Prior to the date of the Zoom Hearing, all hearing participants are directed to test their internet connection speed to ensure that it is at least 3 Mbps. Participants shall also test their ability to run Zoom using <https://www.zoom.us/test>. Counsel shall ensure that all witnesses have access to Zoom and have complied with their testing obligations prior to the Hearing.

(15) **Zoom Operating Instructions:** For the purpose of ensuring a smooth and efficient hearing, prior to the date of the Zoom Hearing all hearing participants (including counsel and witnesses) shall review the following information in order to familiarize themselves with the use of Zoom:

- (a) **Hardware:** Zoom is compatible for use on mobile devices (such as a smartphone or tablet) as well as personal computer (laptop or desktop) which have camera and microphone function.
- (b) **Installation/Update of Zoom:** To participate you need to install the Zoom app on your smartphone/tablet or install the Zoom software on a Windows or Mac laptop/desktop. If you already have Zoom installed on the device you are using for the Hearing, you must ensure the application is updated to the most recent version.

	<p>Apple SmartPhones or Tablets can download the Zoom App from the Apps Store. Android devices can use the Google Play Store.</p> <p>You do not need to create a Zoom account, the app installed is all you need</p>
<p>Zoom Client for Meetings</p> <p>The web browser client will download automatically when you meeting, and is also available for manual download here.</p> <p>Download Version 4.6.11 (20559.0413)</p>	<p>Windows or Mac laptops can download the Zoom software from: https://zoom.us/download</p> <p>You do not need to create a Zoom account, the app installed is all you need</p>

- (c) **Testing Your Device:** As stated above, all hearing participants are required to test their device compatibility with Zoom requirements prior to the date of the Hearing. Participants can test their ability to operate Zoom at <https://www.zoom.us/test>. Tests must be conducted on the same device that will be used to participate in the hearing.
- (d) **Using Zoom:** Using the device on which Zoom has been installed and tested, click on the link to the meeting.

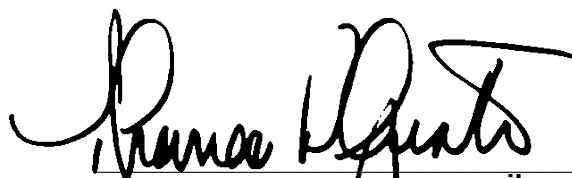
 <p>Join Audio</p>	<p>When you join the meeting, the microphone button above will look like this, click on it, and follow the prompts to connect audio to the conference.</p>
<p>Zoom Functions</p>	<p>Exits Meeting</p> <p>Mutes/Unmutes Microphone or Camera (Red = muted)</p>  <p>Switches between Gallery (see all participants) and speaker (see active speaker only) View</p>

For additional assistance using Zoom, please consult the Zoom “Help Center” at <https://support.zoom.us/hc/en-us> which offers “quick start guides” and video tutorials.

(e) **Screen Mode:** Parties are expected to view the Hearing using the “Speaker View” mode.

(16) **Notice of this Order:** The Plaintiff shall *immediately* serve this Order on all interested Parties by U.S mail, fax, and direct email (separate from CM/ECF), as available, and immediately file a *certificate of service*.

(17) **Failure by any Party to comply with any terms of this Order** will result in the imposition of sanctions on said Party by, *inter alia*, reprimand, fine, prohibition against said Party from offering testimony and/or dismissal.


 Thomas P. Agresti, Judge jlm
 United States Bankruptcy Court